



Cynthia J. DePaul was convicted of theft<sup>1</sup> as a Class D felony after a jury trial and was sentenced to fourteen months incarceration. She appeals, raising the following two restated issues:

- I. Whether sufficient evidence was presented to support her conviction for theft; and
- II. Whether her sentence was inappropriate in light of the nature of the offense and her character.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

At the end of May 2005, Nancy Camp, Vice President of Finance and Administration of WiseWay Food Centers, began investigating suspicious voided transactions and gift certificate transactions at the WiseWay location in Valparaiso, Indiana. During this investigation, Camp discovered that 117 fraudulent transactions had occurred from June 4, 2004 to May 9, 2005 at the cash register located at the service desk area. It was also discovered that DePaul was the only employee who was working when each of the fraudulent transactions occurred. DePaul was a twelve-year employee, who worked behind the service desk.

The investigation revealed that DePaul logged into a service desk register using a cashier's code. She would ring up a one-cent sale to the floral department and show that a gift certificate was tendered for payment of the sale. The register's transaction would then show that the change from the gift certificate was given in cash from a vault near the register. DePaul would exchange the gift certificate for cash. These transactions usually involved gift

---

<sup>1</sup> See IC 35-43-4-2(a).

certificates in the amount \$200.00 to \$300.00. DePaul would place the gift certificate with the remaining cash to complete the transaction. Shortly thereafter, she would void the one-cent transaction in order to balance the daily reports. The daily report would therefore show that the physical cash amount was decreased by the gift certificate amount, but the gift certificates redeemed would be increased by the amount of the gift certificate. The “two together would not have any effect on the business as far as a shortage,” and it would appear that everything was balanced. *Tr.* at 126. The gift certificates were then shredded the next morning. Because DePaul opened the service desk on certain mornings, she would count the redeemed gift certificates from the previous day and had access to keeping some of these to use in the fraudulent transactions. As a result of Camp’s investigation, she discovered that approximately \$30,520.00 in fraudulent transactions occurred from June 4, 2004 to May 9, 2005.

DePaul was charged with one count of theft as a Class D felony and one count of deception as a Class A misdemeanor, which was later dismissed on motion by DePaul. A jury trial was held, and DePaul was convicted of Class D felony theft. At the sentencing hearing, the trial court found two mitigating factors, that DePaul had no criminal history and that imprisonment would result in undue hardship to herself and her family, and no aggravating factors. It sentenced her to fourteen months with no time suspended. DePaul now appeals.

## **DISCUSSION AND DECISION**

### **I. Sufficiency of the Evidence**

Our standard of review for sufficiency claims is well settled. We do not reweigh the

evidence or judge the credibility of the witnesses. *Williams v. State*, 873 N.E.2d 144, 147 (Ind. Ct. App. 2007). We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *Id.*; *Robinson v. State*, 835 N.E.2d 518, 523 (Ind. Ct. App. 2005). We will affirm the conviction if sufficient probative evidence exists from which the fact finder could find the defendant guilty beyond a reasonable doubt. *Williams*, 873 N.E.2d at 147; *Robinson*, 835 N.E.2d at 523. A conviction may be based purely on circumstantial evidence. *Hayes v. State*, 876 N.E.2d 373, 375 (Ind. Ct. App. 2007), *trans. denied* (citing *Moore v. State*, 652 N.E.2d 53, 55 (Ind. 1995)). On appeal, the circumstantial evidence is not required to overcome every reasonable hypothesis of innocence; “[i]t is enough if an inference reasonably tending to support the conviction can be drawn from the circumstantial evidence.” *Id.*

DePaul argues that insufficient evidence was presented to support her conviction for theft. Specifically, she contends that the State’s entire case against her was based on circumstantial evidence, which included that DePaul was the only employee clocked in at every shift when the fraudulent transactions occurred at the service desk register. She claims that this was insufficient to support her conviction because the evidence showed that another employee was terminated around the same time for transactions involving gift certificates and that witnesses testified that many unauthorized employees had access to the service desk registers and the override codes for said registers.

Here, the evidence presented demonstrated that DePaul had access to the register behind the service desk and was clocked in and working at that location when each of the 117 fraudulent transactions occurred. When these transactions occurred, DePaul was either

working alone or working with only one other person behind the service desk. On several of the occasions when she was working with another employee, that employee would be on break when the fraudulent transaction occurred. The transactions were conducted using a cashier's code, and DePaul knew all of these codes because they were written on a piece of paper in the service desk area, which enabled her to use them to complete the fraudulent transactions. *Tr.* at 273. Although DePaul states that the cashiers also had access to the service desk area, the evidence actually showed that cashiers did not have access to the area to ring up gift certificates, and managers, not cashiers, were the ones able to access the service desk area. *Id.* at 53, 156, 195, 225. Therefore, the evidence presented showed that DePaul was present during each of the fraudulent transactions, she had the means to commit the theft, and she had the opportunity to conceal the transactions using a cashier's code. We conclude that sufficient evidence was presented to support her conviction for theft. DePaul's argument that the theft was committed by another employee, who was fired the day after the last fraudulent transaction, is merely a request to reweigh the evidence, which we cannot do. *Williams*, 873 N.E.2d at 147.

## **II. Inappropriate Sentence**

Appellate courts may revise a sentence after careful review of the trial court's decision if they conclude that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial court followed the appropriate procedure in arriving at its sentence, the appellate court still maintains a constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005).

DePaul argues that her fourteen-month sentence was inappropriate in light of the nature of the offense and her character. She contends that her sentence was inappropriate as to the nature of the crime because although theft is a serious crime, it is not a crime of violence. She also claims that she does not pose a risk to society and that she has always been a law-abiding citizen as this was her first criminal offense.<sup>2</sup>

As to the nature of the offense, DePaul stole over \$30,000.00 from her place of employment, where she had worked for over twelve years. Although her theft may not have been a violent crime, she clearly violated a position of trust with the company. Instead of looking out for the best interest of WiseWay, where she had been employed for such a lengthy time period, DePaul committed 117 fraudulent transactions against the company. Additionally, DePaul committed 117 different fraudulent transactions against WiseWay, but was only charged and convicted of one count of theft. Therefore, based on the nature of the offense, her sentence was appropriate.

As to DePaul's character, the evidence showed that this was her first criminal offense, and she did not have a history of delinquency or criminal activity. Although the present theft conviction was her first criminal offense, it was not a one-time offense. The evidence demonstrated that this was a long-term crime as it was committed through 117 different fraudulent transactions over a period of approximately one year. Additionally, as previously stated, it was accomplished by violating the position of trust that DePaul held with her long-

---

<sup>2</sup> DePaul also seems to argue that she should have received a suspended sentence or short-term imprisonment based on the recommendation of the probation department contained in her pre-sentence report. An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. *Anglemyer v.*

term employer. Further, DePaul was convicted of a Class D felony, which has a sentencing range of between six months and three years, and she was only sentenced to fourteen months. We do not believe that DePaul's mitigated sentence of fourteen months was inappropriate in light of the nature of the offense and her character.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.

---

*State*, 868 N.E.2d 482, 493 (Ind. 2007). As the trial court specifically found that no objective evidence support this proposed mitigating factor, it did not err in not finding it to be mitigating.